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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/19/2006

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EXAMINER

KUMAR, PREETI

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,980

Applicant(s)

GEFFROY, CEDRIC

Examiner

Preeti Kumar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 95-117 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 95-117 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Final Rejection

1. Claim 53 is cancelled. Claims 95-117 are pending. Claims 95 and 96 are independent. Claims 100-117 are newly added in the amendment filed July 27, 2006.

Response to Amendment

2. The objection of claim 53 is withdrawn.
3. The rejection of claims 53 under 35 U.S.C. 102(b) as being anticipated by Altmann et al. (EP 1096060) is withdrawn.
4. The rejection of claims 53 under 35 U.S.C. 102(b) as being anticipated by Barnabas et al. (WO 00/65014) is withdrawn.
5. The rejection of claim 53 under 35 U.S.C. 112, second paragraph, is withdrawn.
6. The rejection of claim 53 under 35 U.S.C. 101 is withdrawn.
7. The objection of claim 97 is maintained. Specifically, claim 97 does not make grammatical sense.
8. The rejection of claims 95-96 and 99 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 39, 40 and 43 of copending Application No. US 10/658,577 is maintained since the filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101. Furthermore, the subject matter claimed in the instant application is fully and identically disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming identical subject matter, as follows: The process of contacting a

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textile article by rinsing with 0.001 to 5 g/l of a formulation comprising a solid organic active substance and recovering the textile article.

9. The rejection of claims 95-99 under 35 U.S.C. 102(b) as being anticipated by Altmann et al. (EP 1096060) is maintained. See the New Grounds of Rejection below.

10. The rejection of claims 95-99 under 35 U.S.C. 102(b) as being anticipated by Barnabas et al. (WO 00/65014) is maintained. See the New Grounds of Rejection below.

Response to Arguments

11. Applicant's arguments with respect to claims 95-117 have been considered but are moot in view of the new ground(s) of rejection. Applicants urge that both Altmann et al. (EP 1096060) and Barnabas et al. (WO 00/65014) do not teach the claimed copolymers in the claimed ratio as recited by the instant independent claims 95 and 96. Contrary to Applicant's arguments, Altmann et al. (EP 1096060) teach the claimed acrylic acid/dimethylaminoethyl methacrylate copolymers in the claimed 50:50 ratio. See [0033], [0037] and [0039]. Also, Barnabas et al. teach the claimed acrylic acid methacrylate copolymers in examples IV and V on pages 56 and 57 having the claimed ratios and claimed molecular weights. Accordingly the rejections have been maintained and the newly added claims have been addressed in the New Grounds of Rejection below.

New Grounds of Rejection

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 95-117 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 95-117 are replete with grammatical and conceptual errors that results in indefiniteness. For example, the following items are indefinite:

WHAT is in the form of a stable dispersion?

Is the pH of from 2 to 5 referring to the pH of the active substance or the pH of the active substance dispersed in the aqueous or aqueous-alcohol medium or pH of the vehicle dispersed in the aqueous or aqueous-alcohol medium or the pH of the rinsing formulation or pH of the rinsing operation?

Is the organic polymer (on the top of page 5, and the middle of page 6) limiting the active substance or the vehicle?

Is the rinsing formulation same as the rinsing medium, rinsing operation, and the rinsing bath?

The claims recite properties of the active substance and the vehicle in multiple places within the claims at multiple times within the same claim.

Specific to claim 97, ln.4, Applicants forgot to address the sentence after "other than".

Specific to the newly added claims, it is indefinite if the active substance referenced by character A and the active substance comprising a organic polymer are the same or different. Examiner suggests deletion of all reference characters in all

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pending claims and any future claims that Applicant might present. Most importantly, Examiner suggests that Applicant write the claims using guidelines followed in standard sentence construction.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 95-117 are rejected under 35 U.S.C. 102(b) as being anticipated by Altmann et al. (EP 1096060).

Altmann et al. teach a wrinkle resistant rinsing medium having a pH between 4 and 8 [see 0144] comprising tert-butyl acrylate active substance in particulate form and a acrylic acid vehicle [see 0033-0039 and 0044 and 0056], the aqueous or aqueous-alcohol medium such as mixtures of water with an alcohol [see 0106] and a hydrophobic active agent such as perfumes, colorants and dyes [see 0114-0117, 0134, 0137 and 0145] and a cationic surfactants and antimicrobial agents [see 0090-0093 and 0124-0130]. Specifically regarding the process step of contacting, Altmann et al. teach that the wrinkle resistant composition may be in a variety of forms and is applied by soaking, washing, or rinsing the textile articles with the aforementioned composition. See [0146 and 0151]. In table on page 65, Altmann et al. teach in formulation E about 3.7% of dry matter in 96.3% water, which weight percent of formulation anticipates the claimed volume.

Altmann et al. teach the claimed acrylic acid/dimethylaminoethyl methacrylate copolymers in the claimed 50:50 ratio. See [0033], [0037] and [0039].

Accordingly the teachings of Altmann et al. anticipate the material limitations of the instant claims.

16. Claims 95-117 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnabas et al. (WO 00/65014).

Barnabas et al. teach a process of using a treating composition to provide improved color appearance and/or pill prevention and/or abrasion resistance and/or wrinkle resistance and/or shrinkage resistance benefits, while at the same time providing improved cleaning benefits. See abstract.

Regarding the formulation intended for use in an operation of rinsing textile fiber articles by means of an aqueous or aqueous-alcoholic medium, said formulation, comprising at least one active substance comprising a solid organic polymer in particulate form, Barnabas et al. teach a tert-butyl acrylate copolymer and an acrylic acid vehicle. (See example IV and V) on pages 55-57.

Barnabas et al. teach a formulation such that, during use in aqueous cleaning operations, the aqueous medium, such as wash water will have a pH of between about 6.5 and about 11. Techniques for controlling or varying pH at recommended usage levels include the use of buffers, alkalis, acids, etc., and are well known to those skilled in the art. (See page 5, ln.22-25). In examples VIII and IX Barnabas et al. illustrate formulations having a pH of 3-6. See page 59-60.

Barnabas et al. teach a formulation comprising a cationic surfactant, namely, ammonium surfactants and quaternary ammonium compounds (See page 17, ln.10-32).

Barnabas et al. teach a rinse medium comprising xanthan, gellan and wellan gums. (See page 3, ln.4 and page 10, ln.31-32 and page 11).

Barnabas et al. teach a hydrophobic active substance, namely a sulfonated zinc phalocyanine optical brightener encapsulated in dextrin soluble polymer. See page 51,ln.5-25 and page 53, ln.6-8.

Barnabas et al. teach that the formulation can be in solid, liquid or gel forms. See page3,ln.15. Barnabas et al. teach that in a process of using the formulation in a wash or rinse added method; using about 0.01% to about 30% of the formulation is deposited onto the fabric articles. See page 4,ln.5-15. Barnabas et al. illustrate by example about 2 -30wt % of a formulation comprising t-butyl acrylate/acrylic acid copolymer and surfactant and perfume and the balance (about 98-70%) being water. See example V and VIII formulations a-f on pages 56-59.

Regarding the claimed properties/nature of the active substance, aqueous or aqueous-alcoholic medium, and of the vehicle being such that: the active substance is insoluble in the medium, has an overall zero or cationic charge in the medium, is stabilized in the medium by means of a cationic surfactant, it being possible for said cationic surfactant to be wholly or partly replaced by a nonionic surfactant when the polymer constituting the active substance is intrinsically cationic or intrinsically potentially cationic in the medium, remains insoluble in the rinsing medium or is capable of swelling in the rinsing medium; and the vehicle is soluble or dispersible in the medium

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and in the rinsing medium, has an overall cationic or zero ionic charge in the medium, and at the pH of the rinsing operation in the rinsing medium is capable of developing nonionic charges in sufficient quantity to destabilize the active substance in the rinsing medium as recited by the instant claims 95 and 96; it is reasonable to presume that said limitations are inherent to the invention of Barnabas et al. because the presumption is supported by the use of similar materials (i.e. a rinse formulation comprising a tert-butyl acrylate active substance and an acrylic acid vehicle and an aqueous water medium and xanthan rinse medium and hydrophobic active substances such as dyes, perfumes, and germicides) and in the similar production steps (i.e. contact with textile fiber in a rinse bath) to impart antiwrinkle and fragrancing properties to the textile. The burden is upon the applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594.

Barnabas et al. illustrate about 2 % of formulation comprising t-butyl acrylate/acrylic acid copolymer and surfactant and perfume having a pH of 4.5-5 in about 98% water. See page 56-57 examples V, VI formulations f. Accordingly the teachings of Barnabas et al. anticipate the material limitations of the instant claims.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Mc Ginty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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PK



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SUPERVISORY PATENT EXAMINER

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